



**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of:

██████████ ██████████  
c/o ██████████ ██████████  
██████████ ██████████  
██████████ ██████████

DECISION

MPA/171787

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 29, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability [“DCHAA”] in regard to Medical Assistance [“MA”], a Hearing was held via telephone from Madison, Wisconsin on March 15, 2016.

The issue for determination is whether the Division of Hearings and Appeals [“DHA”] has jurisdiction in this matter.

There appeared at that time via telephone the following persons:

**PARTIES IN INTEREST:**

Petitioner:

██████████ ██████████ (not present at March 15,  
2016 Hearing)  
c/o ██████████ ██████████  
██████████ ██████████  
██████████ ██████████

Represented by:

██████████ ██████████, petitioner’s mother  
██████████ ██████████  
██████████ ██████████

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

BY: ██████████ ██████████, OTR [Ms. ██████████ did not appear at the March 15, 2016 Hearing but submitted a letter, with attachments, dated February 24, 2016 (Exhibit #2)]

Division of Health Care Access and Accountability  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:  
Sean P. Maloney  
Division of Hearings and Appeals

### **FINDINGS OF FACT**

1. Petitioner (11 years old) is a resident of Wood County, Wisconsin.
2. On November 18, 2015 petitioner's provider, [REDACTED] [REDACTED] [REDACTED] of Wisconsin Rapids, Wisconsin, filed a Prior Authorization ["PA"] request (PA # [REDACTED]; dated November 18, 2015) with DCHAA requesting MA payment for Occupational Therapy ["OT"] for 90 minutes each session, 2 sessions per week, for 26 weeks with a requested start date of December 17, 2015 at a total cost of \$5,700.00. Exhibit #2.
3. On December 14, 2015 DCHAA denied PA # [REDACTED]; DCHAA sent a letter to petitioner dated December 14, 2015 and entitled *BadgerCare Plus Notice of Appeal Rights* informing petitioner of the denial; that December 14<sup>th</sup> letter explained petitioner's appeal rights and clearly set-out the appeal deadline, where an appeal request must be sent to, and the address of DHA to which an appeal must be mailed. Exhibit #3.
4. Petitioner's requested a Hearing by a *Request For Fair Hearing* form dated January 28, 2016 and received by DHA on February 1, 2016 via U.S. Mail postmarked January 29, 2016.

### **DISCUSSION**

DHA has authority to hold a Hearing and make a decision only if the law provides for such authority. In legal language this authority is known as *jurisdiction*.

In order for DHA to have jurisdiction, an appeal of an action concerning MA, such as a denial of PA, must be made within 45 days of the effective date. Wis. Stat. § 49.45(5)(a) (2013-14); Wis. Admin. Code § DHS 104.01(5)(a)3. (December 2008); Wis. Admin. Code § HA 3.05(3) (February 2013); see also, 42 C.F.R. § 431.221(d) (2015). A Hearing request that is not filed within the 45-day time period must be dismissed for lack of jurisdiction. Wis. Admin. Code § HA 3.05(4)(e) (February 2013).

A Hearing request is considered filed on the date of actual receipt by DHA or the date of the postmark, whichever is earlier. Wis. Admin. Code § HA 3.05(3)(c) (February 2013); See also, Wis. Admin. Code §§ HA 3.02(2) & 3.05(2)(a) (February 2013); and, Wis. Admin. Code § DHS 101.03(8) (December 2008). In this case the Hearing request was postmarked January 29, 2016. Thus, it is considered filed on January 29, 2016.

In this matter the effective date of the action was December 14, 2015 -- the date of the letter denying petitioner's request for PA. Forty-five days from December 14, 2016 was January 28, 2016. Petitioner's request for a Hearing was not filed until January 29, 2016. Thus, petitioner's request for a Hearing was not made within the allowed 45-day time period and DHA does not have jurisdiction.

**CONCLUSIONS OF LAW**

For the reasons stated above, DHA does not have jurisdiction in this matter.

**NOW, THEREFORE, it is**

**ORDERED**

That the petition for review herein be and the same is hereby DISMISSED.

**REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 1st day of April, 2016

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\sSean P. Maloney  
Administrative Law Judge  
Division of Hearings and Appeals





**State of Wisconsin \DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on April 1, 2016.

Division of Health Care Access and Accountability